

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

November 22, 2006

In Reply Refer To:
Docket Nos. ER05-6-082
EL04-135-085
EL02-111-102
EL03-212-098

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Dear Messrs. Weiler and Weinberg:

1. On August 2, 2006, you filed a Stipulation and Agreement (Settlement) on behalf of Dayton Power and Light Company (Dayton), Allegheny Electric Cooperative (Allegheny), and Southern Maryland Electric Cooperative (SMECO). The Settlement fully resolves all obligations as a result of the seams elimination cost adjustment (SECA) charges between Dayton and, individually, Allegheny and SMECO. Specifically, under the Settlement, Allegheny and SMECO, individually, agreed to bear a total monetary payment to Dayton equal to sixty percent of Dayton's lost revenues applicable to Allegheny and SMECO, respectively, under the SECA, currently on file with the Commission. On August 7, 2006, Commission Trial Staff filed comments in support of the Settlement. On September 7, 2006, the Presiding Administrative Law Judge certified the Settlement to the Commission as an uncontested partial settlement.

2. The Settlement is fair and reasonable and in the public interest and is hereby approved. Under the Settlement, the standard of review for any modifications to this

Settlement requested by a party that are not agreed to by all parties shall be the public interest standard under the *Mobile-Sierra* doctrine. The standard of review for any modifications to this Settlement requested by a non-party to the Settlement and the Commission will be the most stringent standard permissible under applicable law.¹ The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

4. This letter order terminates Docket Nos. ER05-6-082, EL04-135-085, EL02-111-102, and EL03-212-098.

By direction of the Commission. Commissioner Kelly concurring with a
separate statement attached.
Commissioner Wellinghoff dissenting in part
with a separate statement attached.

Magalie R. Salas,
Secretary.

¹ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). As a general matter, parties may bind the Commission to a public interest standard of review. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case we find that the public interest standard should apply.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission
System Operator, Inc.

Docket Nos. ER05-6-082

Midwest Independent Transmission
System Operator, Inc.
PJM Interconnection, LLC, *et al.*

EL04-135-085

Midwest Independent Transmission
System Operator, Inc.
PJM Interconnection, LLC, *et al.*

EL02-111-102

Ameren Services Company, *et al.*

EL03-212-098

(Issued November 22, 2006)

KELLY, Commissioner, *concurring*:

The settling parties request that the Commission apply the “most stringent standard permissible under applicable law” with respect to any future modifications requested by a non-party or the Commission. With respect to such modifications, the order states that the *Mobile-Sierra* “public interest” standard of review should apply. This settlement resolves issues related to the Seams Elimination Cost Adjustment (SECA) monetary obligations between the parties for the period ending March 31, 2006. It is uncontested, does not affect non-settling parties, and resolves the amount of the claimed SECA obligations between the parties for the relevant prior period. The settlement does not contemplate ongoing performance under the settlement into the future, which would raise the issue of what standard the Commission should apply to review any possible future modifications sought by non-parties or the Commission. Indeed, in a sense, the standard of review is irrelevant here. Therefore, while I do not agree with the order’s statements regarding the applicability of the *Mobile-Sierra* “public interest” standard of review (*see* footnote 1), I concur with the order’s approval of this settlement agreement.

Suedeem G. Kelly

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Dayton Power and Light Company,
Allegheny Electric Cooperative and
Southern Maryland Electric Cooperative

Docket Nos. ER05-6-082,
ER04-135-085,
EL02-111-102,
and EL03-212-098

(Issued November 22, 2006)

WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to the instant settlement that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,² I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).